THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :20.09.2007

+ **OMP 62/2005**

M/S KRISHNA CONSTRUCTION CO. ....PETITIONER

- versus -

M/S ENGINEERING PROJECTS (INDIA) LTD & ANR. ...RESPONDENTS

Advocates who appeared in this case:
For the Petitioner : Mr S. D. Salwan with Mr Neeraj Chaudhary.
For the Respondents : Mr Sanjay Poddar

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. This is a petition under Section 11 read with Section 5 and 12 and 30 and 33 of the Arbitration Act, 1940 filed on behalf of the petitioner. The prayer is that the order dated 30.1.2004 passed by the learned Arbitrator (respondent No.2 herein) be set aside and the four applications, which were disposed of by the said order, be allowed. It is also prayed that the authority of the respondent No.2 to act as an arbitrator be revoked and upon such revocation, an independent arbitrator be appointed.

2. The impugned order dated 30.1.2004 was passed in respect of four applications filed on behalf of the petitioner. The applications were as under:-

> (1) Application dated 21.9.2002 for a direction to the respondent No.1 to admit/deny the documents filed by the petitioner along with the application dated 9.12.1999 and also copies of all extracts of the measurement book available on record;
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> (2) the petitioner's application dated 20.9.2002 for recording evidence, taking measurement on the site or in the alternative serving interrogatories to the witnesses;
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> (3) the petitioner's application dated 21.9.2002 for amendment of the statement of claims; and
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> (4) the petitioner's application dated 6.1.2003 for placing two documents dated 21.3.1986 and 20.4.1986 on record.

3. The learned counsel for the petitioner submitted that the learned arbitrator has not considered the submissions made on behalf of the petitioner and has unduly rejected the applications. On the other hand, the learned counsel appearing for the respondent No.1 submitted that the impugned order is a detailed order in which each of the contentions of the parties was noted and decisions have been given with reasons in respect of each of these contentions. He also submitted that the learned arbitrator has not outrightly rejected all the applications. In most of the applications, the learned arbitrator has stated that it would be considered at the appropriate stage.

4. Considering the arguments advanced by the learned counsel for the parties and upon going through the impugned order, I find that insofar as first

application is concerned, the dispute arises because the original measurement books have been destroyed on account of a fire at the respondent No 1's office. The learned counsel for the petitioner submits that these books, which have allegedly been destroyed in the fire, had been handed over to the petitioner for the purpose of photo copying and the petitioner had taken photo copies of the said books and then returned the originals to the respondent No.1. It is only thereafter that the fire had allegedly destroyed the said books. The petitioner's case is that the petitioner be permitted to present the photo copies taken by it and the respondent No.1 be asked to admit/deny the same. On going through the order passed by the learned arbitrator, I find that the learned arbitrator has not denied the prayer of the petitioner. However, he has observed that since the records were fairly voluminous and not all of it was relevant, it was necessary to find out as to which portion was relevant and only thereafter, the respondent No.1 be called upon to admit/deny the same. The learned arbitrator observed as under:-

> "At this stage, when the argument in support of Claim No.1 had already commenced on 28th July, 1999; admission/denial of these voluminous documents will unnecessarily delay the proceedings, which were commenced long back in the year 1990."

He concluded his findings on this application as under:-

> "Thus at this stage, I do not consider it necessary to direct the respondent to admit or deny these documents. Consequently, the application is disposed of with these directions."

5. This aspect of the matter has been considered by me and I am of the view that the grievance of the petitioner can be addressed by directing the petitioner to indicate which of the photo copies of the measurement books would be relevant for the case and thereafter, the respondent No.1 shall admit or deny the same. The dispute between the parties is with regard to the 13th Running Bill and the petitioner will point out only those documents which are relevant. The learned arbitrator will consider the relevancy of those documents and if they are relevant, the respondent No.1 shall be asked to admit/deny the same. With this direction the conclusion of the learned arbitrator in respect of the first application is modified accordingly.

6. Insofar as the second application is concerned, the learned arbitrator has noted that the petitioner had closed his evidence and because of this reason the application for recording evidence and for taking measurement of site or in the alternative serving interrogatories on the witnesses was rejected. The learned counsel for the petitioner submits that the observation of the learned arbitrator that the claimant has closed his evidence is not correct. He submits that evidence has been led on a particular aspect of the matter and it is only in respect of that particular aspect that the evidence was closed whereas evidence in respect of the entire case has yet to be led. On the other hand, the learned counsel for the respondent No.1 submitted that the statement noted in

the impugned order that the claimant has closed his evidence is correct and that the claimant had led his entire evidence in respect of issue No.15. This is a matter of record and I leave it to the arbitrator to re-examine this issue and determine as to whether the petitioner had, in fact, closed his evidence in respect of issue No. 15 or not. Therefore, in respect of this application, I set aside the order of the arbitrator and require him to reconsider the question whether the petitioner had, in fact, closed his evidence in respect of issue No. 15 or not. For this purpose, he need only to examine the record of the case.

7. Insofar as the third application for amendment of the statement of claim is concerned, I find that the learned arbitrator has bifurcated the petitioner's claim into two categories. One is an amendment sought due to calculation mistakes or typing errors and the other relates to works against which revised quantities have been raised. Insofar as the latter kind of amendment is concerned, I agree with the learned arbitrator that the same cannot be permitted. However, the amendment of the claim to correct the calculation mistakes and typing errors is permissible and I find that the learned arbitrator has also not denied the same. The order indicates that the counsel for the petitioner could not point out specifically as to which were the amendments which pertain to calculation mistakes and typing errors and it is for this reason that the arbitrator observed that the application dated 21.3.1986 can be considered at the time of arguments in respect of the claims. I see no infirmity

in this conclusion and, therefore, the impugned order does not call for any interference in respect of this conclusion.

8. As regards the fourth application dated 6.1.2003 for placing on record the two documents dated 21.3.1986 and 20.4.1986, I see no reason as to why the petitioner has any grievance because the learned arbitrator has concluded that without considering the relevancy or admissibility of the same, the two documents be taken on record. The issue of relevancy and admissibility would be considered by the learned arbitrator at a later stage and, if necessary, he would permit the parties to lead evidence on this matter subject to the conclusion that the arbitrator may arrive at with regard to closure of evidence by the petitioner in respect of issue No. 15. I see no reason as to why the mandate or authority of the arbitrator needs to be revoked. The parties shall appear before the learned Arbitrator on 8.10.2004 at 4.30 p.m. The learned arbitrator shall be permitted to extend the time for making the award as may be mutually agreed upon by the parties from time to time.

With these observations and directions, this petition stands disposed of.

BADAR DURREZ AHMED
(JUDGE)

September 20, 2007
J